

Bonnco and its workers compensation insurance carrier, Business Insurance (jointly referred to as "Bonnco") ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge La Jeunesse's award of medical benefits to N. J. N. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUE PRESENTED

On September 12, 2002, Mr. N. filed an Application For Hearing with the Commission to compel Bonnco to pay medical expenses and disability compensation for a work-related injury Mr. N. suffered at Bonnco on February 18, 1997. Judge La Jeunesse held a hearing on Mr. N. claim on April 28, 2003. On October 20, 2003, Judge La Jeunesse issued his decision awarding permanent partial disability compensation and medical expenses to Mr. N..

In its motion for review to the Appeals Board, Bonnco does not contest Mr. N.' right to disability compensation. However, Bonnco argues that Judge La Jeunesse erred in awarding medical benefits to Mr. N.. Specifically, Bonnco contends that Mr. N.' right to medical benefits expired pursuant to § 34A-2-417(1) because he did not incur work-related medical expenses and submit those expense to Bonnco for more than three years.

FINDINGS OF FACT

The relevant facts are not in dispute. Mr. N. suffered a work-related back injury at Bonnco on February 18, 1997. Bonnco accepted liability under the Workers' Compensation Act and paid the expenses of Mr. N.' medical treatment through February 1998. Mr. N. was then incarcerated from June 1999 until November 2001. While incarcerated, he received medical care for his back injury from prison physicians. No medical expenses were submitted to Bonnco for payment. During May 2002, after his release from prison, Mr. N. obtained treatment for his work-related back injury from a private physician. The physician submitted the expenses of this treatment to Bonnco for payment.

DISCUSSION AND CONCLUSIONS OF LAW

Section 34A-2-417(1) of the Utah Workers' Compensation Act provides as follows:

(1) Except with respect to prosthetic devices, in nonpermanent total disability cases an employee's medical benefit entitlement ceases if for a period of three consecutive years the employee does not:

(a) incur medical expenses reasonably related to the industrial accident; and

(b) submit the medical expenses incurred to the employee's employer or insurance carrier for payment.

The foregoing statute terminates an injured worker's right to payment of continuing medical expenses if the injured worker does not satisfy the two conditions set out in subsections (a) and (b). In Mr. N.' case, it is admitted that the requirement of subsection (b) was not met—no medical expenses were submitted to Bonnco. Thus, pursuant to § 34A-2-417(1), Mr. N.' entitlement to continuing medical care for his work-related injury has ended.

While it may be argued that this result is unfair to Mr. N., the result is dictated by the plain language of the Workers' Compensation Act. As the Utah Court of Appeals stated in Bevans v. Industrial Commission, 790 P.2d 573, 578 (Utah App. 1990), "(t)he Industrial Commission is not free to 'legislate' in areas apparently overlooked by our lawmakers or to exercise power not expressly or impliedly granted to it by the legislature, even in the name of fairness." The Appeals Board therefore reverses that part of Judge La Jeunesse's decision awarding medical benefits to Mr. N..

ORDER

The Appeals Board grants Bonnco's motion for review and sets aside that part of Judge La Jeunesse's decision awarding payment of medical expenses to Mr. N.. The remainder of Judge La Jeunesse's decision, including his award of disability compensation to Mr. N., remains in effect. It is so ordered.

Dated this 3rd day of May, 2004.

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph E. Hatch